

Message Text

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ACTION DLOS-09

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EPA-01 ERDA-05 FMC-01 TRSE-00 H-01 INR-07 INT-05
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FROM: LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: INFORMAL PLENARY ON CDS, ARTICLE 9

1. SUMMARY: THE JUNE 7 MEETING OF THE INFORMAL PLENARY ON CDS CON-
CLUDED ITS DISCUSSIONS OF ARTICLE 9 (CHOICE OF PROCEDURE)1 THE GREAT
MAJORITY OF THE DELEGATIONS PRESENT ENDORSED THE PART IV RSNT REV. 2
AS AN IMPROVEMENT OVER THE RSNT REV. 1, AND FOUND ARTICLE 9 A REASON-
ABLE COMPROMISE. BROAD SUPPORT WAS EVINced FOR A SINGLE LOST (LAW OF
THE SEA TRIBUNAL) WITH AN INDEPENDENT SDC (SEABED DISPUTE CHAMBER)
ENJOYING EXCLUSIVE JURISDICTION OVER ALL DISPUTES RELATING TO PART I.
RATHER THAN TWO TRUBUNALS.
ALTHOUGH PREFERENCE WAS EXPRESSED ON SEVERAL OCCASIONS FOR THE LOST AS

THE RESIDUAL FORUM UNDER ARTICLE 9(5), MOST DELEGATES INDICATED THAT
THEY COULD ACCPET ARBITRATION AS PROVIDED. CONSIDERABLE OBJECTION,
HOWEVER, WAS RAISED AS TO THE NEED FOR SPECIAL ARBITRAL PROCEDURES
(SAP),

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AND SUPPORT WAS GIVEN FOR THE TUNISIAN PROPOSAL TO DELETE THE LAST HALF
OF

ARTICLE 9(2). IF SPECIAL ARBITRAL PROCEDURES WERE RETAINED, MANY
DELEGATIONS WERE INSISTENT THAT NO CDS LACUNAE EMANATING FROM ARTICLE

9(2) BE PERMITTED AND BELIEVED AN AMENDMENT WOULD BE NECESSARY. IN HIS

PREFACOTY REMARKS THE CHAIRMAN, PRESIDENT AMERASINGHE, STATED THAT ARTICLES 17 AND 18 APPLY TO ALL DISPUTE SETTLEMENT PROCEDURES IN THE TREATY, THEREBY REMOVING ANY DOUBTS THAT I.E., THE MILITARY EXCEPTION IN ARTICLE 18 APPLIED TO ALL DISPUTES. END SUMMARY.

2. IN A CONTINUATION OF YESTERDAY'S DEBATE ON ARTICLE 9 AND PURSUANT TO THE PROCEDURAL FRAMEWORK ESTABLISHED BY INDONESIA, MANY STATES, INCLUDING CANADA, INDIA, SINGAPORE, AUSTRALI, MEXICO, ECUADOR, THE CONGO, ROMANIA, SWEDEN, BULGARIA, URUGUAY, CHILE AND IRAN INDICATED THAT THEY COULD ACCEPT THELOST WITH A SDC ENJOYING EXCLUSIVE OBLIGATORY JURISDICTION OVER ALL DEEP SEABED MATTERS. WITH REFERENCE TO THIS ISSUE THE FRG INDICATED IT WAS TOO EARLY TO TAKE A POSITION; AUSTRALIA, THAT COMMITTEE I SHOULD DECIDE WHETHER THE SDC SHOULD ENJOY EXCLUSIVE JURISDICTION; JAPAN, THAT IT WAS TOO EARLY TO TAKE A POSITION; THE NETHERLANDS, THAT IT DID NOT BELIEVE AN INDEPENDENT SDC NECESSARY; THE UKRAINIAN SSR, THAT A SDC AS PART OF THE LOST MIGHT BE ACCEPTABLE, BUT THAT THE ACCESS AND FUNCTIONING OF SUCH A CHAMBER WOULD HAVE TO BE DECIDED FIRST; AND ITALY, THAT SHE WOULD PREFER THE FULL LOST CONSIDER DEEP SEABED ISSUES.

3. REGARDING THE QUESTION OF ANNEX IV AND SPECIAL ARBITRAL PROCEDURES (SAP), INDONESIA, POLAND, CANADA, INDIA, HONDURES, URUGAY, THE UNITED KINGDOM, CHILE, IRAN, AND BAHRAIN INDICATED THAT THEY COULD ACCPET ANNEX IV. HOWEVER, OF THESE STATES POLAND, INDIA, ECUADOR AND THE CONGO SUPPORTED THE DELETION IN ARTICLE 9(2) OF THE CLAUSE "FOR THE SETTLEMENT OF DISPUTES TO WHICH THE ACCEPTED SPECIAL ARBITRATION PROCEDURES IS NOT APPLICABLE." THE EFFECT OF SUCH A DELETION WOULD BE TO REQUIRE A STATE OPTING FOR SAP UNDER ARTICLE 9(1)(D) TO ACCPET YET ANOTHER FORUM UNDER ARTICLE 9(1), A POSITION COMPLETELY LIMITED OFFICIAL USE

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UNACCAPTABLE TO THE USSR. INDONESIA, THE NETHERLANDS, AND BAHRAIN STATED THAT WERE ARTICLE 9(1)(D) RETAINED, ARTICLE 9(2) WOULD ALSO HAVE TO BE RETAINED TO AVOID LACUNAE OCCURING IF A STATE WERE TO ELECT SAP UNDER ARTICLE 9(1)(D). OTHER STATES CONCERNED ABOUT POSSIBLE EVASION OF CDS UNDER ARTICLE 9(1)(D) INCLUDED THE UK AND CHILE.

4. THE FRG SUPPORTED THE TEXT, AND FOUND ARTICLE 9 WAS SATISFACTORY AS DRAFTED. HOWEVER, IT ADVISED AGAINST DELETION OF ARTICLE 9(2) AS LONG AS ARTICLE 9(1) WAS RETAINED, AND OBJECTED TO DELETION OF THE LAST CLAUSE OF ARTICLE 9(2). IT FURTHER STATED THT IT WAS TOO EARLY TO TAKE A POSITION ON ARTICLE 15 OF ANNEX II.

5. THE UNITED KINGDOM, WHILE STATING THAT PART IV REV. 2 REPRESENTED AN IMPROVEMENT OVER REV. 1, NONETHELESS PROCEEDED TO REJECT MUCH OF THE NEW COMPROMISE FORMULATION, IN THAT SHE THOUGH SOME MODIFICATION OF THE LOS TRIBUNAL WAS NECESSARY. IN EFFECT, IT MADE A STRONG INTERVENTION IN FAVOR OF ARBITRATION AS THE OPTIMAL FORUM, BASING THIS

ON: (A) ARBITRATORS, GIVEN THEIR EXPERTISE, ARE MORE SUITABLE TO ADDRESS PARTICULAR TYPES OF ISSUES THAN ARE MEMBERS OF PRE-CONSTITUTED

TRIBUNALS; (B) A FIXED TRIBUNAL IS UNNECESSARY, UNDULY EXPENSIVE, AND TOO COMPLICATED; (C) ARBITRATION IS BY FAR THE MOST ACCEPTED INTERNATIONAL FORUM FOR PEACEFUL SETTLEMENT. SHE DID, HOWEVER, STATE THAT WERE A SDC TO BE ACCEPTED, ITS COMPETENCE AND SELECTION OF ITS MEMBERS WOULD BE THE CRITICAL FACTORS.

6. THE UKRAINIAN SSR INDICATED ITS SUPPORT FOR REV. 2, AND THE FLEXIBILITY OF PROCEDURE PROVIDED IN ARTICLE 9. IT STRONGLY SUPPORTED SAP, STATING THAT NO POSSIBLE LACUNAE EXISTED FOR A STATE OPTING FOR THAT CHOICE OF PROCEDURE, BUT WISHED THAT ARTICLE 9(2) BE REFRATED TO TAKE CARE OF SEABEDS DISPUTES, TO REMOVE ANY LINGERING DOUBTS AS TO A LACUNAE IN THAT PARTICULAR CASE.

7. THE CHAIRMAN ADJOURNED THE MEETING AND THE DISCUSSION OF ARTI-LIMITED OFFICIAL USE

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CLE 9, AND ANNOUNCED THE INFORMAL PLENARY WOULD NEXT MEET, MONDAY, 13 JUNE TO CONSIDER ARTICLES 12 (PROVISIONAL MEASURES) AND 14 (PROMPT RELEASE OF VESSELS.)

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